

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of:

Schools and Libraries Universal Service

CC Docket No. 02-6

**REPLY COMMENTS
OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

I. INTRODUCTION AND SUMMARY

The California Public Utilities Commission and the People of the State of California (CPUC or California) respectfully submit these reply comments in response to the Federal Communications Commission's (FCC or Commission) December 23, 2003 Second Further Notice of Proposed Rulemaking (*Second FNPRM*) in the above-captioned docket. In the *Second FNPRM*, the Commission sought comment on issues relating to the administration of the schools and libraries universal service mechanism.

For the reasons discussed below, California believes the Commission should not reduce the discount matrix at this time, but rather should assess the effect the Commission's newly adopted rules will have on making support for internal connections regularly available to a larger number of applicants. The Commission should retain the current definition of Internet access. In addition, the CPUC believes the Commission

should recover funds that are disbursed in violation of statutory requirements, program rules, or administrative errors not only from the service providers but also from the schools or library participants. The CPUC also comments on other actions to reduce waste, fraud, and abuse and priority of applicants that have not achieved connectivity. The Commission has set forth a number of issues for comment in this *Second FNPRM*, and the CPUC comments only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with these proposals.

II. BACKGROUND

In the *Third Report and Order* the Commission addresses several matters related to the administration of the schools and libraries universal service mechanism. In order to expand the reach of program funds to more applicants, the Commission, among other things, concluded that eligible entities should be precluded from upgrading or replacing internal connections on a yearly basis, but rather may receive support for discounted internal connections services no more than twice in every five years. The Commission also adopted a rule that prohibits a school or library from transferring equipment purchased with universal service discounts, as part of eligible internal connections services, for a period of three years except in limited circumstances.

In the *Second FNPRM*, the Commission proposes changes in the administration of the schools and libraries universal service mechanism (e-rate program) in order to simplify program administration, ensure equitable distribution of funds, and protect

against waste, fraud, and abuse. In these reply comments, the CPUC responds to some of these specific proposals.

III. PROPOSED CHANGES IN THE ADMINISTRATION OF THE SCHOOLS AND LIBRARIES SUPPORT MECHANISM

A. Discount Matrix

The Commission seeks comment on changing the discount matrix to adjust the levels of discounts received by schools and libraries for supported services. (*Second FNPRM*, par. 59.) In particular, the Commission seeks comment on whether the Commission should amend the discount matrix to reduce the discounts available in some or all of the discount bands, including the current 90 percent discount band. (*Second FNPRM*, par. 61.) The CPUC believes the recent modifications in the universal service mechanism of limiting the upgrade and replacement of internal connections to twice in every five year period and the prohibition in the transfer of equipment purchased with universal service discounts for a period of three years should result in expanding the reach of program funds to more economically disadvantaged schools and libraries. Consequently, reducing the discount would be premature at this time. The CPUC disagrees with those commenters who support amending the discount matrix to reduce the discounts available in some or all of the discount bands. In their comments, Sprint and BellSouth Corporation support revising the current discount matrix. BellSouth believes the 90% discount does not provide enough incentives to participants to control costs and gives the service providers reason to inflate costs for their services. Thus, BellSouth believes the highest discount available should be 75%. (BellSouth Comments,

p. 7.) On the other hand, Sprint recommends lowering the maximum discount level only on internal connection installation requests to 80% beginning Funding Year 2005.

However, Sprint recommends the maximum discount for maintenance of internal connections be maintained at 90%. Like BellSouth, Sprint believes the 10% funding to be provided by the schools from their own funds is not enough incentive for the schools to consider the most judicious use of their resources. (Sprint Comments, p. 1-2.)

While the CPUC agrees that reducing the maximum discount would enable the program to reach more participants, we believe that increasing the schools share of the costs would prevent some schools and libraries from participating in the program. Currently, some states have cut funding to schools and libraries due to state budgetary constraints. Thus, some schools may not be able to absorb the increase in their share of the service costs. We agree with United Utilities' Inc. and the National Association of State Utility Consumers Advocates (NASUCA) that many of the neediest applicants may not have the means to pay more than the 10% of the service costs and that this change may result in the disadvantaged schools not having the technology they need. (United Utilities Comments, p. 2; NASUCA Comments, p. 2.) Consequently, the CPUC recommends the Commission assess the impact of these two recently adopted revisions first and revisit the proposed change in the discount matrix in the future.

B. Definition of Internet Access

The Commission seeks comment on whether to amend its definition of Internet access in the schools context to conform to the definition recently adopted for the rural

health care mechanism. (*Second FNPRM*, par. 71.) In the Commission's recent *Rural Health Care Order*,¹ the Commission concluded that the definition currently used in the schools and libraries context was too limited for the rural health care program because it precludes support for features that provide the capability to generate or alter the content of information. The Commission concluded that the ability to alter and interact with information over the Internet is a functionality that could facilitate improved medical care in rural areas. (*Second FNPRM*, par. 70.)

In its comments, Verizon states expanding the definition of Internet access would not be in compliance with the Act's requirement that "such funding be 'economically reasonable,' given the already overcommitted \$2.25 billion in funds allocated for the program." (Verizon Comments, p. 11.) Verizon further states that adopting a new definition will limit the funds available for more basic services. California agrees with Verizon that the requirement for Internet access should not be the same for the rural health care program and the schools and libraries program. While the rural health care program needs to have more interactive information access to facilitate improved medical health in the rural areas, this is not true in the case of schools and libraries. Furthermore, during the past several years, services available and offered over the Internet have included new technologies that are even offered free to the users. The CPUC believes that instead of expanding the definition of Internet access, thereby increasing the funding

¹ Rural Health Care Support Mechanism, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 03-288, (rel. Nov. 17, 2003) (*Rural Health Care Order*).

required for this service, the Commission should direct their efforts into encouraging schools that do not have Internet access to avail themselves of this service.

C. Recovery of Funds

The Commission seeks comment on whether to adopt specific recovery rules for funds that are disbursed in violation of statutory requirements. (*Second FNPRM*, par. 81.) A number of service providers believe the Commission should not hold the service providers responsible for recovering funds that have already been disbursed to the applicant. Verizon believes recovery should not be pursued for minor technical violations except when fraud is involved, when the service provider is only serving as a “replacement” payment conduit for a school or library (in cases where the original service provider has gone out of business), and a statute of limitations should be adopted for funds recovery. (Verizon Comments, pp. 2-6.) Qwest Communications opines recovery should not be pursued from the service provider unless it believes the service provider was responsible for the erroneous disbursement. (Qwest Comments, pp. 9-10.) Qwest believes if the service provider is not responsible for the erroneous disbursement, it should not be burdened by the task of collecting or absorbing the loss in case of non-recovery of the disallowed amount. Cox Communications recommends the rules should be amended to make the applicant responsible for the repayment of funds if it can be proven that the applicant was solely responsible for the error. (Cox Comments, p.9.) Further, Cox believes that a statute of limitations should apply. (Cox Comments, pp. 9-10.)

The CPUC believes the Commission should recover funds that are disbursed in violation of statutory requirements, program rules, or administrative errors not only from the service providers but also from the schools or library participants. This is especially true in the case of schools or libraries that pay the bill in full and seek reimbursement from the Administrator and thus, use the Billed Applicant Reimbursement Form.

Although the service providers may not be responsible for erroneously billed services, the CPUC agrees that for administrative efficiency and ease in implementation, the current practice of seeking reimbursement from the service providers should be continued. While it is true that service providers may not be responsible for some of the disallowances, the current recovery options in place provide enough safeguards to enable the service provider to recover the disallowed amount from the applicant (if the error was the applicant's fault).

California agrees with Kellogg & Sovereign Consulting that the service provider and applicant should be accountable. California, however, does not agree the applicant should be penalized for actions made by the service provider. In Kellogg & Sovereign Consulting's example, the funding request for internal connections by an applicant associated with a service provider who has an outstanding commitment adjustment would be held until the outstanding commitment adjustment is settled. (Kellogg & Sovereign Comments, pp. 12 -13). The CPUC believes the party found to have violated the universal service rules should be held liable. Thus, if the outstanding commitment adjustment was due to the service provider's fault and the service provider has failed to settle its accountability, the service provider should be barred from participating in the

e-rate program until such time that it has satisfactorily settled its accountability. In the case of an applicant having an outstanding commitment adjustment, California agrees with Kellogg & Sovereign that the applicant be subjected to a thorough and rigorous screening before receiving funding commitments in the future. Further, California agrees that since the e-rate program is a major source of funding for the applicant, any withholding of e-rate support should be for only one funding cycle.

California has addressed this issue in the administration of its own California Teleconnect Fund (CTF). The CTF is the CPUC's program to advance universal service by providing discounted rates for telecommunications services to qualifying schools, libraries, hospitals, health clinics, and community organizations. The procedure for seeking reimbursement for funds disbursed in connection with CTF eligible services provides that the service provider submit CTF claims to the CPUC on behalf of all the applicants availing themselves of its services. For example, when the service providers submit erroneous or ineligible claims for Month X, the amounts pertaining thereto are deducted from the claim payment for Month X. If a subsequent review of claims for Month X reveals there were ineligible claims for Month X that were inadvertently paid, the amount of ineligible claims discovered after review are deducted from the service provider's claim payment for Month X+1 or any subsequent payment. Recovery of funds disallowed from the applicant is a matter left to the service provider and applicant to resolve. This procedure is also followed for the CPUC's other universal service programs where payment to the service provider is done through the submission of

claims. The CPUC has not received any objection regarding this procedure from either the service provider or applicant since this procedure was implemented in 1999.

D. Other Actions to Reduce Waste, Fraud, and Abuse

1. Recordkeeping Requirements

The Commission requests comment on whether to amend its rules governing the maintenance of records related to the receipt of universal service discounts. (*Second FNPRM*, par. 88.) The Commission specifically seeks comment on whether to amend its rules to require that all records related to the receipt of or delivery of discounted services, sufficient to demonstrate compliance with the Commission's rules governing the schools and libraries mechanism, be maintained by the beneficiary for a period of five years. (*Second FNPRM*, par. 88.) The Commission also invites comment on a requirement that service providers comply with random audits or reviews that the Commission or USAC may undertake periodically to assure program compliance. (*Second FNPRM*, par. 89.) The CPUC agrees with the United Utilities and Kellogg & Sovereign Consulting that records relative to the competitive bidding process be maintained for a period of five years. (United Utilities Comments, pp. 3-4; Kellogg & Sovereign Consulting Comments, pp. 14-15.) This is in keeping with the Commission's recently adopted rule that records documenting transfers of equipment must be maintained by both the transferring and receiving entities. The CPUC also agrees with BellSouth that service providers should only be required to retain records on applicants for whom they provide service, and not on their unsuccessful bids. (BellSouth Comments, p. 9.)

The CPUC also believes the e-rate program needs to be evaluated to determine whether its goals are being met, and agrees with Kellogg & Sovereign Consulting that service providers comply with random audits or reviews (Kellogg & Sovereign Consulting Comments, p. 15.) As with other programs that are tripartite in nature, the beneficiaries consent to have the service providers release information to the auditors or reviewers should be a requirement.

2. Technology Plans

The Commission seeks comment on whether to revise its rules regarding technology plans. (Second FNPRM, par. 94.) The American Association of School Administrators (AASA) and the Association of Educational Service Agents (AESA) support the efforts by the Commission to align its technology planning requirements with the requirements of the No School Left Behind Act within the Department of Education. (AASA & AESA Comments, p. 6.) AASA & AESA state this will “alleviate duplication of work at the local level and allow for continuity of message and focus in technology planning within school districts.”

The CPUC agrees with AASA & AESA that requiring the applicant’s technology plan to be more consistent with the planning goals and requirements of the Department of Education and or the Institute of Museum and Library Services would ensure goal congruence and an effective use of e-rate funds. This would also ensure that all the applicants for e-rate funding are working within the purview of the No Child Left Behind Act of 2001 (“NCLB Act”). The NCLB Act views technology as an important tool in

expanding access to learning and closing the achievement gap. By ensuring that the applicants work within the purview of the NCLB Act, students in the high-poverty areas are given the same tools and opportunities that are available to students in other areas.

E. Priority for Applicants that Have Not Achieved Connectivity

The Commission seeks comment on whether it should provide priority for internal connections to those applicants that have not yet achieved Internet connectivity in their classrooms or libraries. (*Second FNPRM*, par. 98.)

The Education and Libraries Networks Coalition (EdLiNC) supports the Commission's goal of achieving 100% connectivity for schools and libraries as soon as possible. However, they also realize this may create pressures on the program. Thus, they recommend the Commission undertake a study to identify who are not connected, the reasons for the unconnectivity, and the cost of connecting those who are interested in participating in the program (EdLiNC Comments, p. 12.)

The CPUC agrees with EdLiNC that an assessment should first be made on the characteristics of the 8% that still remain unconnected. After an assessment has been made, the Commission may opt to implement an outreach program to target applicants that can be connected but do not know how to go about obtaining e-rate funding. For example, with regard to the CPUC's Universal Lifeline Telephone Service (ULTS) Program for low-income households,² the CPUC has entered into a marketing contract

² The ULTS program was established by the CPUC to provide discounted basic residential telephone services to low-income households and operates a competitively neutral marketing program.

whose primary goal is to market the ULTS program to hard-to reach qualified households.

IV. CONCLUSION

California believes the Commission should not reduce the discount matrix. The Commission should retain the current definition of Internet access. In addition, the CPUC believes the Commission should recover funds that are disbursed in violation of statutory requirements, program rules, or administrative errors not only from the service providers but also from the schools or library participants.

Respectfully submitted,

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